

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of )

3 )  
4 Craig for U.S. Senate and Kay O'Riordan, )  
5 in her official capacity as treasurer )  
6 Larry E. Craig )

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7  
8 **GENERAL COUNSEL'S REPORT # 2**

9 **I. ACTIONS RECOMMENDED**

10 Enter into pre-probable cause conciliation with Craig for U.S. Senate and Kay  
11 O'Riordan, in her official capacity as treasurer ("the Committee"), and Larry E. Craig  
12 (collectively "Respondents"). Approve the attached proposed conciliation agreement.

13 **II. BACKGROUND**

14 This matter arose from a complaint alleging that former Senator Larry E. Craig violated  
15 the Federal Election Campaign Act of 1971, as amended, by improperly using in excess of  
16 \$213,000 in campaign funds for personal use for legal and media relations fees stemming from  
17 an arrest that occurred on June 11, 2007, at the Minneapolis International Airport. After  
18 considering the complaint, Craig's response to the complaint, and the publicly available  
19 information, the Commission found reason to believe that the Committee and Craig violated  
20 2 U.S.C. § 439a(b) by using campaign funds for legal fees and expenses Craig incurred in  
21 connection with an attempt to overturn his August 8, 2007 conviction, and thus converting those  
22 funds to personal use. The Commission determined that Craig's use of campaign funds to pay  
23 for legal fees to respond to a U.S. Senate Select Committee on Ethics ("SCE") inquiry and to pay  
24 for public relations fees to respond to press inquiries regarding Craig's arrest and misdemeanor  
25 conviction was a permissible use of campaign funds. See Factual and Legal Analysis for Craig

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1 at pp. 8, 11-13 and Craig for U.S. Senate at pp. 7, 11-12. The Commission authorized an  
2 investigation to determine the specific amount of the impermissible use of campaign funds.

3 Since the Commission's reason to believe determination, our investigation determined  
4 that the Committee disbursed \$257,920.93 in campaign funds to the law firms Sutherland, Asbill  
5 & Brennan ("Sutherland") and Kelly & Jacobson ("Kelly") to pay for legal fees and expenses  
6 incurred in connection with the efforts to overturn Craig's misdemeanor conviction. Consistent  
7 with the Commission's reason to believe findings, the disbursements to Sutherland and Kelly do  
8 not conform to the Act's permissible use of campaign funds, and therefore the Respondents  
9 converted those funds to personal use. Because the Respondents have indicated a willingness to  
10 engage in pre-probable cause conciliation, we recommend that the Commission authorize  
11 conciliation before a finding of probable cause.

12 **III. RESULTS OF THE INVESTIGATION**  
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14 The Committee's itemized disclosure reports reflect that from July 9, 2007, through  
15 October 5, 2008, the Committee disbursed \$361,643.44 to the law firms retained to overturn  
16 Craig's conviction, Sutherland and Kelly, as follows:  
17

DATE	PAYEE	AMOUNT	PURPOSE
7/09/2007	Sutherland, Asbill & Brennan	\$37,350.50	P. R. Legal Fees
10/29/2007	Sutherland, Asbill & Brennan	\$7,373.00	Legal Fees
10/29/2007	Sutherland, Asbill & Brennan	\$74,075.84	Legal Fees
12/05/2007	Kelly & Jacobson	\$22,032.87	Legal Fees
12/17/2007	Sutherland, Asbill & Brennan	\$17,647.08	Legal Fees
1/21/2008	Sutherland, Asbill & Brennan	\$67,468.78	Legal Fees
2/03/2008	Sutherland, Asbill & Brennan	\$80,695.37	Legal Fees
10/05/2008	Kelly & Jacobson	\$55,000.00	Legal Fees
	<b>Total Amount</b>	<b>\$361,643.44</b>	

1 The Committee disbursed campaign funds to the Kelly firm before and after the SCE  
2  
3 admonished Craig in February 2008 for violating Senate Ethics Rules and wherein the SCE  
4 questioned whether Craig's disbursement of campaign funds to pay public relations fees and  
5 legal fees regarding his misdemeanor conviction violated the Senate Ethics Rules and the  
6 Commission's regulations. See Factual and Legal Analyses for Craig and Craig for U.S. Senate  
7 at pp. 4-5. While the SCE took no position on what portion of Craig's legal expenses could be  
8 payable with campaign funds, it admonished Craig for failing to seek the SCE's approval to use  
9 campaign funds for the payment of public relations fees and legal fees. Further, the SCE  
10 instructed Craig to "take careful note that the Committee will consider any further use of your  
11 campaign funds for legal expenses without the Committee's approval to be conduct  
12 demonstrating your continuing disregard of ethics requirements." *Public Letter of Admonition*,  
13 United States Senate (Feb. 13, 2008)(Select Committee on Ethics). During our investigation,  
14 Craig acknowledged these disbursements and asserted that the "applicable law and regulations  
15 authorized Craig for Senate to make any and all disbursements related to this matter." See

1 Response to Informal Discovery and Documents Requests, Andrew D. Herman, September 21,  
2 2009 ("Response, September 21, 2009").

3 Billing invoices and summaries obtained from the Committee during our investigation  
4 confirm the Committee's disbursements to Sutherland and Kelly, but reveal that a significant  
5 portion of the funds disbursed to Sutherland were permissible payments to the PR firm Impact  
6 Strategies for public relations services. See Response, September 21, 2009 at pp. 5, 25, 30, 62,  
7 69. The Sutherland firm served as an intermediary between the Committee and Impact  
8 Strategies, wherein Impact Strategies submitted invoices to the Sutherland firm and these  
9 charges were included in the firm's invoices to Craig. See *id.* at pp. 15-16; see also pp. 21-25.  
10 The evidence obtained from Respondents reveals that the amounts billed by Sutherland were  
11 divided as follows between Impact Strategies and Sutherland's own legal fees:

DATE	PAYEE	INVOICE TOTAL AMOUNT	IMPACT STRATEGIES PORTION	SUTHERLAND LEGAL FEES PORTION
7/09/2007	Sutherland, Asbill & Brennan	\$37,350.50	\$8,526.00	\$28,824.50
10/29/2007	Sutherland, Asbill & Brennan	\$7,373.00	\$3,062.50	\$4,310.50
10/29/2007	Sutherland, Asbill & Brennan	\$74,075.84	\$7,926.00	\$66,149.84
12/17/2007	Sutherland, Asbill & Brennan	\$17,647.08	0.00	\$17,647.08
1/21/2008	Sutherland, Asbill & Brennan	\$67,468.78	\$39,553.01	\$27,915.77
2/03/2008	Sutherland, Asbill & Brennan	\$80,695.37	\$44,655.00	\$36,040.37
	<b>TOTALS</b>	<b>\$284,610.57</b>	<b>\$103,722.51</b>	<b>\$180,888.06</b>

Therefore, the actual amount impermissibly disbursed by the Committee to the Sutherland firm for legal fees incurred in the effort to overturn Craig's misdemeanor conviction was \$180,888.06. As noted earlier, the Committee also disbursed \$77,032.87 to the Kelly firm for legal fees incurred in the effort to overturn Craig's state conviction. As such, Craig converted \$257,920.93 in campaign funds for personal use to pay legal fees to overturn his misdemeanor conviction, and this amount should be refunded to the Committee. Accordingly, the Committee violated 2 U.S.C. § 439a(b) by permitting Craig to use campaign funds for personal use and Larry E. Craig violated 2 U.S.C. § 439a(b) by using campaign funds for legal fees and expenses Craig incurred in connection with an attempt to overturn his August 8, 2007 conviction.

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**V. RECOMMENDATIONS**

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1. Enter into pre-probable cause conciliation with Craig for U.S. Senate and  
Kay O'Riordan, in her official capacity as treasurer.

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2. Enter into pre-probable cause conciliation with Larry E. Craig.

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3. Approve the attached conciliation agreement.

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4. Approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

7-2-10

Date

BY:

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